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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/779,798	02/08/2001	Don Spyker	124023-1000	6749
7590	02/24/2005		EXAMINER	
Todd E. Landis Gardere Wynne Sewell, LLP 3000 Thanksgiving Tower 1601 Elm Street, Suite 3000 Dallas, TX 75201-4767			GOTTSCHALK, MARTIN A	
			ART UNIT	PAPER NUMBER
			3626	
DATE MAILED: 02/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/779,798	SPYKER, DON
	Examiner Martin A. Gottschalk	Art Unit 3626

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08 February 2001.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-26 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-26 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>05/21/2001</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

1. Claims 1-26 have been examined.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 8 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- A. Claim 8 recites,

"The fitness system of claim 4 wherein the predetermined workout programs are"

There is no period or suitable language to complete the sentence of the claim. For the purposes of examination and in view of the specification and the context of the other claims, the Examiner will consider the claim to read as follows:

"The fitness system of claim 4 wherein the predetermined workout programs are monthly workout routines."

Appropriate correction is requested.

- B. Claim 18 recites the limitation,

"The system of claim 1 wherein the global communications network is the Internet."

There is insufficient antecedent basis for the phrase "the global communications network" in the claim. For the purpose of examination and in view of the language of claim 1, the Examiner will consider the claim to read as follows:

"The system of claim 1 wherein the telecommunications network is the Internet."

Appropriate correction is requested.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Imbo (PG Pub. No. US 2002/0033753, hereinafter Imbo).

A. As per claim 1, Imbo discloses a fitness system (Imbo: [0023]; [0083]; Figs. 4 through 9) for use across a telecommunications network (Imbo: [0022]; [0177]; Fig. 2) comprising:

one or more computers having one or more users desiring motivational support for workouts (Imbo: [0022]);

and a fitness server communicably linked to the one or more computers through the telecommunications network and being configured to provide exercise routines (Imbo: [0192] through [0197]), parameters (Imbo: [0083]), tracking (Imbo: [0186]), and motivational assistance (Imbo: [0204]).

B. As per claim 2, Imbo further discloses a system wherein the fitness server includes a workout module (Imbo: [0083]), a membership module (Imbo: [0188]; Figs. 10a through 10h), a food module (Imbo: [0207], reads on, "...system is provided that addresses...nutritional needs of users."), and an email module (Imbo: [0195]; [0196]; [0201]; Figs. 3a, 3b, and 4).

C. As per claim 3, Imbo further discloses a system wherein the workout module includes workout routines (Imbo: [0083]).

D. As per claim 4, Imbo further discloses a system wherein the workout routines are predetermined workout programs (Imbo: [0083]).

E. As per claim 5, Imbo further discloses a system wherein the workout routines are user specified workout programs (Imbo [0174]; [0175]).

F. As per claim 6, Imbo further discloses a system wherein the predetermined workout programs are daily workout routines (Imbo: [0083]; Fig 10c).

G. As per claim 7, Imbo further discloses a system wherein the predetermined workout programs are weekly workout routines (Imbo: [0032]; [0188]; Fig. 10c).

H. As per claim 8, Imbo discloses a system wherein the predetermined workout programs are monthly workout routines (Imbo: [0083], note the Examiner considers the repeated cycles of Monday through Friday routines to be a form of monthly workout routine.). Also note, the Examiner is assuming the above limitation in light of the 35 U.S.C. 112, second paragraph issue with respect to this claim.

I. As per claim 9, Imbo discloses a system wherein the workout module includes workout logs (Imbo: [00168] through [0177]; Fig. 5. The Examiner considers the recording the of results for the "Back Fly" exercise shown in Fig. 5 to be a form of workout log).

J. As per claim 10, Imbo discloses a system wherein the workout logs correspond to one or more users (Imbo: [0168] through [0177]).

K. As per claim 11, Imbo discloses a system wherein the workout module includes workout histories (Imbo: [0186]; Fig. 8).

L. As per claim 12, Imbo discloses a system wherein the workout histories correspond to one or more users (Imbo: [0186]; Fig. 8).

M. As per claim 13, Imbo further discloses a system wherein the membership module includes payment mechanism (Imbo: [0190]; Figs. 10f and 10g).

N. As per claim 14, Imbo further discloses a system wherein the payment mechanism allows the membership module to verify payment information supplied by one or more users (Imbo [0180]. The Examiner considers the log in functionality to include verification of payment information).

O. As per claim 15, Imbo further discloses a system wherein the membership module is configured to update (Imbo: Fig 9, reads on “make changes.”) and verify the account status of one or more users (Imbo [0180]. The Examiner considers the log in functionality to include verification of account status).

P. As per claim 16, Imbo further discloses a system wherein the email

module is configured to provide motivational messages to one or more users (Imbo: [0163]; Fig. 4).

Q. As per claim 17, Imbo further discloses a system wherein the food module is configured to provide nutritional guidance to one or more users (Imbo: [0207] through [0212]).

R. As per claim 18, Imbo further discloses a system wherein the telecommunications network is the Internet (Imbo: [0164]; [0177]; [0206]; Fig. 2).

S. As per claim 19, Imbo discloses a method of personal training (Imbo: [0023]; [0083]; Figs. 4 through 9) across a global communications network (Imbo: [0022]; [0177]; Fig. 2) comprising the steps of:

specifying a fitness level for at least one person (Imbo: [0048] through [0051]);

electing a goal for the person (Imbo: [0068] through [0077]);

selecting a workout program corresponding to the goal (Imbo: [0083]; Fig. 10d);

charting progress of the person in the chosen workout program (Imbo: [0168] through [0177]; [0186]; Figs. 5, 6, and 8);

providing motivational statements to the person via the global communications network, wherein the motivational statements encourage the person to continue with and fulfill the workout program (Imbo: [0022]; [0163];

[0178]; [0179]; [0204]; [0205]; Fig. 4).

T. As per claims 20, 21, and 22, Imbo further discloses a method wherein the fitness level (Imbo: [0048]) is beginner (Imbo: [0049]), intermediate (Imbo: [0050]), and advanced (Imbo: [0051]) respectively.

U. As per claim 23 Imbo further discloses a method wherein the step of charting is performed using at least a first workout log (Imbo: [0168] through [0177]; Fig. 5. The Examiner considers the recording the results for the "Back Fly" exercise shown in Fig. 5 to be a form of a first workout log.) and at least a second workout log (Imbo: [0186]; Fig. 6. The Examiner considers the recording of the results for the "Wall Squat" exercise shown in Fig. 6 to be a form of a second workout log.).

V. As per claim 24, Imbo further discloses a method wherein the first workout log is a weight training log (Imbo: [0170], reads on "Bicep Curls"; [0172], reads on "sets" and "repetitions"; and Fig. 5, reads on "Back Fly").

W. As per claim 25, Imbo further discloses a method wherein the second workout log is a cardiovascular log (Imbo: [0213], reads on, "...tool to track...caloric expenditures associated with cardiovascular work").

X. As per claim 26, Imbo discloses a method wherein the global communications network is the Internet (Imbo: [0164]; [0177]; [0206]; Fig. 2).

Conclusion

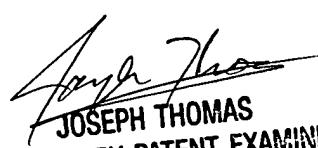
6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not applied patent prior art discloses a system for monitoring physical exercise (US Pat# 5,387,164); and systems for providing personalized exercise programs (US Pat#s 5,931,763; 6,050,924; and 6,077,193). The cited but not applied non-patent literature (Crain's Chicago Business: May 08, 2000. Vol. 23, Iss. 19, p. 16.) discloses a national health club chain providing fitness-related services through the Internet.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Martin A. Gottschalk whose telephone number is 703-305-5356. The examiner can normally be reached on Mon - Fri 8:30 - 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on 703-305-9588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MG
02/04/2005


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